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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
Implementation of Section 309(j))	MM Docket No. 97-234
of the Communications Act –)	
Competitive Bidding for Commercial)	
Broadcast and Instructional Television Fixed)	
Service Licenses)	
)	
Reexamination of the Policy)	GC Docket No. 92-52
Statement of Comparative)	
Broadcast Hearings)	
)	
Proposals to Reform the Commission's)	GEN Docket No. 90-264
Comparative Hearing Process to)	
Expedite the Resolution of Cases)	

**COMMENTS ON PROPOSED RULEMAKING
SUBMITTED BY KIDD COMMUNICATIONS**

In response to the Notice of Proposed Rulemaking, adopted November 25, 1997 and released November 26, 1997, the following Comments on Proposed Rulemaking are hereby submitted by KIDD COMMUNICATIONS.

Notice of Proposed Rulemaking - Page 6 - No. 10 - Comment on whether we should use comparative hearings for all or a subset of such applications.

Comment: Future mutually exclusive applications to modify existing facilities must not be subject to auction if they can be resolved between the parties.

Once an overlap and mutually exclusive application is discovered, a 30 day window must be allowed for the parties to modify their applications to clear up the overlap.

If an existing station files for a major change it must not be automatically considered for an auction. As an example, if KIDD COMMUNICATION'S AM 590 KTHO applies for a daytime power increase from 2,500 watts to 5,000 watts, it must protect existing stations on 580 KHz, 600 KHz, as well as 590 KHz. Any new applicant that would be mutually exclusive with this power increase must protect KTHO's existing contour as well as all the other stations contours.

In many contour overlap situations, a modification of the proposals can eliminate the conflict and provide the grantable power increases without the need for an auction. This can also be the case for new AM applications as well.

It should also be concluded that for the efficiency of Spectrum use the Commission should encourage existing AM licenses to apply for increased power. As man-made interference increases more power is needed to overcome said interference. Many AM power increases result in better coverage within present listening areas, especially where low ground conductivity rock areas are located and electrical power poles and casinos are located. More power provides a clearer AM

sound and must be considered in the public interest, therefore, AM stations must be encouraged to apply without the fear of an inevitable auction.

Furthermore, a freeze on AM power increases for existing stations is contrary to the public interest because: 1) The public is denied the benefit of better reception and additional reception in new coverage areas. The licensee is denied the opportunity to begin the long process of start to finish for an AM power increase. In fact, an AM power increase filed now under normal circumstances could be reasonably expected to be granted in time for construction in the summer of 1998. Unless the freeze can be lifted within the next 60 days, all 1998 broadcast construction plans which require an application will be deferred to some unknown time in the future.

2) There is no benefit to the Commission to freeze out existing AM licensees from major change applications at this time. This will only create a huge back log when the Commission lifts the freeze for all applications. Therefore, KIDD COMMUNICATIONS respectfully proposes that the Commission lift the freeze on major changes for existing AM licensees and permittees within 30 days after the close of reply comments in this proceeding.

Notice of Proposed Rulemaking - Page 8 - No. 15 & 16 - Comment on Refund of filing fees. Comment: The refund of filing fees as proposed must apply

to all pending applications including the after July 1, 1997 applications. The procedures for processing these applications was still unknown after July 1 and, therefore, in all fairness those applicants should be entitled to a full refund if they elect not to participate in the auction.

Notice of Proposed Rulemaking - Page 9- No. 18 - Comment on applicability of auctions to pre July 1, 1997 and after July 1, 1997 applications -

Comment: KIDD COMMUNICATIONS believes that all after July 1, 1997 applications may be awarded by Government lottery. However, there is no reason that the Commission can not approve settlements between the parties of applications filed from July 1, 1997 until the freeze or applications that were filed in response to a cut-off notice from an application that was filed before the freeze. The present Commission rules must allow settlements for expenses only or bona fide mergers among competing applicants for a single facility. This must be allowed at any time without the Commission acting on this NPRM because it is already permitted within the rules and policies of the Commission. Applicants filed with that understanding and, therefore, any settlement/merger applications on the referred to applications should be processed without consideration of the outcome of this proceeding. However, as a separate issue the Commission should consider allowing settlements for more than applicants expenses for these post July 1, 1997 applications. If the

Commission does so a short window of 60 days should be provided for said settlement. Once again, consideration of this waiver should not stall any settlements whatsoever that can be done within the scope of the Commission's long standing rules and policies.

Notice of Proposed Rulemaking - Page 16- No. 40 - Comment on tentative conclusions regarding the applicability of section 309(1) to pending secondary broadcast service applications. Comment: FM translators, TV translator service and low power TV stations are licenses which are always subject to being bumped by a new FM, or full service TV including the new digital TV channels.

Many of these stations serve limited population areas and their continued operation is marginal at best. Future FM and TV translators, and low-power TV stations should be encouraged rather than discouraged by government auctions.

Therefore, since the Commission has concluded that Congress did not intend to include secondary service in the auctions, there is no reason to burden these applicants with auctions.

Lotteries have been an excellent resolution for mutually exclusive applications in the LPTV service. Many LPTV applications have been taken out of MX situations with technical changes submitted by applicants and consent to

acceptance of interference agreements. This has resulted in the granting of two licenses, instead of one. The public certainly benefits from this.

The excellent staff at the LPTV branch has always been available to all applicants regardless of their economic status in the assistance of the processing of their applications.

A curable MX situation is typically two LPTV applicants for the same channel serving different communities that are close enough to have prohibited overlapping contours. The simplest resolution is for both applicants to amend with different offsets to their channels. This allows a higher dbu contour overlap than non-offset channels. If more protection is needed, terrain shielding documentation can be submitted. In a more creative situation one applicant can agree with the competing applicant to file a major change in the next LPTV filing window to change channels, thereby eliminating the mutually exclusive situation. The non-moving applicant proceeds to a grant list and the moving applicant has taken a calculated risk that no one else would apply for that same new channel during the filing window.

The point of the above is that the present procedure is working very well for applicants and the Commission. Congress did not intend to include secondary service in the auctions, therefore, there is no valid reason to do so.

FM translators: The current procedures referenced in paragraph 39 are sufficient and are preferable than auctions for the selection of FM translator applicants. For the future development of the FM translator service, the present selection process must be retained.

Notice of Proposed Rulemaking - Page 17- No. 42 - Comment on how we should exercise this discretion, i.e., should we open the windows or keep them closed? Comment: The applicants who filed during FM filing windows after July 1 or in response to an AM cut off notice or a FM translator cut off notice must be the only applicant eligible to participate for that frequency in the auction.

These applicants rushed around to obtain a transmitter site, hired an engineer and attorney, timely filed an application and paid a filing fee of \$2,470 for FM and \$2,740 for AM. Based upon many years of rules and procedures by the Commission those applicants paid for and earned the right by their timely filing and payment to be the only applicants eligible to participate in the auction.

Notice of Proposed Rulemaking - Page 17- No. 45 - Comment on whether allowing settlements prior to the short-form application deadline preserves the integrity of the auction process - Comment: Settlements should be allowed.

Notice of Proposed Rulemaking - Page 19- No. 49 - Comment on whether we should adopt any special auction policies or procedures in the AM service or other services to accommodate section 307(b) of the Act, 47 U.S.C. § 307(b),

which requires that the Commission distribute licenses among states and communities so as to "provide a fair, efficient, and equitable distribution of radio service." - Comment: In order to provide a fair and equitable distribution of service a bidding credit should be provided to applicants for smaller communities and communities with less stations. The Commission must consider all stations within a metro area not just the city of license of either location. As an example, in Sparks, Nevada there are two licensed radio stations. However, Sparks is located adjacent to Reno, Nevada where there are multiple stations including all the local television stations.

Notice of Proposed Rulemaking - Page 21- No. 55 - Comment on whether to require bidders to bid electronically via computer, or whether to give bidders the option of bidding by telephone - Comment: Requiring bidders to bid electronically would be burdensome and difficult for most radio applicants and, therefore, telephone bidding must be permitted as the preferred method of bidding.

Notice of Proposed Rulemaking - Page 21- No. 56 - Comment on appropriate amount, or method of determining an appropriate amount, of this upfront payments upon the amount of spectrum and population covered by the licenses or permits for which parties intend to bid - Comment: The population served and the class of station is the preferred method in determining the amount of upfront payment required of the applicant. A Class A FM with a service population

of 20,000 would be significantly less than a Class C with a service population of one million. Since all of these facilities would be a start up operation, it would be unfair to base the amount on any existing competitors revenue in the market because a new start up station may never be able to achieve that.

Notice of Proposed Rulemaking - Page 36- No. 92 - Comment on Diversification of Ownership - Comment: The Commission should follow its case law in comparative proceedings and distinguish among applicants based upon their extent and location of their media interests. An applicant with no media interests should receive the most credit. However, an applicant with a single stand alone AM outside the city grade contour of the proposed new facility should receive only slightly less credit. Credits should diminish for AM/FM combos and FM/FM combos until an unknown number of stations are reached. This could depend upon that actual ownership interests of only the applicants who are bidding.

Because full service television stations enjoy a dominance of influence, especially network affiliates, in the interest of diversification of ownership, full service TV owners must receive a demerit in the bidding process. This demerit should be based upon the cities of license of each facility and the demerit should apply if the city of licensee for the new facility is within 50 line of sight miles of the city of license of the applicants full service television station, regardless of whether

or not the radio license community is within the DMA of the television license. In the case of hyphenated TV markets, such as Chico-Redding, or Sacramento-Stockton the 50 miles should be calculated from both ADI/DMA cities to determine if a demerit should apply.

Special restrictions should be placed on the transfer of any license awarded based upon credits and/or demerits.

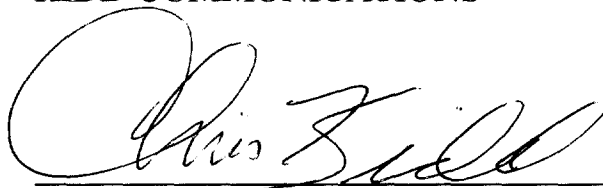
Notice of Proposed Rulemaking - Page 37- No. 93 - Comment on Bidding Credits - Comment: In order for the public to benefit through local ownership, bidding credits must be recognized to FM applicants who were the frequency proponent in the allocation process. An applicant who finds an FM frequency for a particular community is much more likely to be more sensitive and aware of that community's needs as opposed to an outside applicant who simply filed in response to a filing window. Furthermore, an applicant who had to propose to move the frequencies of two FM stations in order to fit the new channel obviously went through a diligent effort to assign a new frequency. A large corporation with unlimited dollars who goes after a channel which comes up in the window can not possibly have the same commitment that a new channel proponent already has demonstrated. Therefore, a bidding credit of 50 percent would be a fair, justified offset for the channel proponent against the new outside large corporations. In

order for this credit not be abused, KIDD COMMUNICATIONS proposes that an applicant only be allowed one credit every five years. This would place the burden on the proponent/ applicant to carefully choose one channel that they really desire to own and operate. In addition the holding period of five years as discussed in paragraph 95 of this NPRM would also apply and if the facility was transferred prior to that date money would be owed to the Commission.

Notice of Proposed Rulemaking - Page 38- No. 96 - Comment Unjust Enrichment - Comment: A declining scale, based upon the number of years a license has been held would be the fairest. Penalties for non-compliance should go beyond monetary forfeitures and should include sanctions such as short term renewals, forfeitures and revocation proceedings.

Respectfully submitted,

KIDD COMMUNICATIONS

A handwritten signature in cursive script, appearing to read "Chris Kidd", written over a horizontal line.

DATED: January 24, 1998

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